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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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13 IN RE HYDROXYCUT MARKETING
AND SALES PRACTICES LITIGATION
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15 JONATHAN BOOSE,

16 Plaintiff,

17 vs.

18 IOVATE HEALTH SCIENCES, INC.,
19 AND IOVATE HEALTH SCIENCES USA,
INC.,
20

21 Defendants.
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CASE NO. 09MD2087-BTM (AJB)

NO. 10 CV1230-BTM

**ORDER GRANTING JOINT
MOTION TO DEEM PLAINTIFF'S
AMENDED AND RESTATED
COMPLAINT TIMELY FILED AND
DENYING AS MOOT
DEFENDANTS' MOTION TO
DISMISS**

23 The original complaint in this action was filed in the Eastern District of Louisiana on April
24 16, 2010. Thereafter, the case was transferred to the Southern District of California and
25 became part of the pending Multidistrict Litigation ("MDL") entitled In re Hydroxycut Marketing
26 and Sales Practices Litigation (09md2087). Upon transfer, the case was assigned a separate
civil case number (10cv1230).

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1 On June 11, 2010, defendants Iovate Health Sciences, Inc. and Iovate Health Sciences
2 U.S.A., Inc. timely filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 9(b).¹

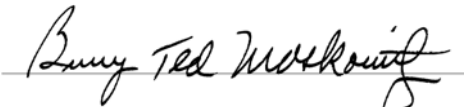
3 On July 15, 2010, attorneys for plaintiff Jonathan Boose filed an Amended and Restated
4 Complaint without leave of court. The parties have now stipulated and agreed that the Plaintiff
5 shall be deemed to have had leave of court and to have timely filed his amended complaint.
6 In furtherance of their agreement, the parties filed a Joint Motion to Deem Plaintiff's Amended
7 and Restated Complaint Timely Filed ("Joint Motion").²

8 Upon review of the papers submitted by the parties, the Court hereby orders as follows:

- 9 1. The Joint Motion is **GRANTED**.
- 10 2. The Plaintiff shall be deemed to have had leave of court to amend his complaint.
- 11 3. The Amended and Restated Complaint filed by Plaintiff Jonathan Boose on July
12 15, 2010 shall be deemed timely filed.
- 13 4. The deadline for Defendants to move, answer or otherwise respond to the
14 Amended and Restated Complaint shall be extended up to and including **August 6, 2010**.
- 15 5. It is further ordered that the pending Motion to Dismiss [09md2087 - Docket Entry
16 243] is **DENIED** as moot since the original complaint will no longer be the operative complaint
17 and Plaintiff has filed his Amended and Restated Complaint in this case.

18 **IT IS SO ORDERED.**

19 DATED: July 22, 2010

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21 Honorable Barry Ted Moskowitz
22 United States District Judge
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27 ¹ [09md2087 - Docket Entry 243]

28 ² [09md2087 - Docket Entry 302]